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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

CHANDLER NELSON HUGHES,

Petitioner,

v.

HALIFAX COUNTY SCHOOL BOARD; JAMES GREGORY; HERBERT LLOYD; and JULIAN HARRISON,

Respondents.

BRIEF IN OPPOSITION OF HALIFAX COUNTY SCHOOL BOARD AND JULIAN HARRISON TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

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TABLE OF CONTENTS

PAGE

Table of Contents..... ii

Table of Authorities..... iii

Statement of the Case..... 1

Summary of Argument..... 5

Argument..... 6

I. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE DIRECTED VERDICT IN FAVOR OF THE BOARD ON THE § 1983 RETALIATION CLAIM..... 6

II. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE DIRECTED VERDICT IN FAVOR OF HARRISON ON THE § 1983 RETALIATION CLAIM..... 10

Conclusion..... 11

TABLE OF AUTHORITIES

PAGE

CASES

Bradley v. School Board, 462 F.2d 1058 (4th Cir. 1972), aff'd 412 U.S. 92 (1973)..... 8

City of Oklahoma v. Tuttle, 471 U.S. 808, 823-24 (1983)..... 9

Hughes v. Halifax County School Board, 855 F.2d 183 (4th Cir. 1988)..... 5

Monell v. Dept. of Social Services of the City of New York, 436 U.S. 658, 694 (1978)..... 6

Pembaur v. Cincinnati, 475 U.S. 469 (1986)..... 4,7

School Board v. Parham, 218 Va. 950, 243 S.E.2d 468 (1978)..... 8

U.S. STATUTES

42 U.S.C. § 1981..... 2

42 U.S.C. § 1983..... 2

42 U.S.C. § 1985..... 2

VA. CONSTITUTIONAL PROVISIONS

Va. Const. Art. VIII, § 7..... 8

VA. STATUTES

Va. Code Ann. § 18.2-499..... 2

Va. Code Ann. § 18.2-500..... 2

Va. Code Ann. § 22.1-28..... 8

STATEMENT OF THE CASE

The petitioner, Chandler Nelson Hughes ("Hughes"), a former maintenance worker with the Halifax County School Board ("Board"), filed this action against the Board, Julian Harrison ("Harrison"), director of maintenance and operations, and three co-workers, Herbert Lloyd, James Gregory, and Tommy Lacks. Hughes alleged, among other things, that his employment was terminated because of his race and in retaliation for his cooperation in a grand jury investigation into misdeeds and criminal acts which had allegedly occurred within the Halifax County school system. Hughes sought recovery based on various civil rights and pendent state law causes of action.

Hughes dismissed Tommy Lacks as a defendant prior to trial. He also dismissed Counts 2, 3 and 4 of his complaint alleging denial of equal protection in violation of 42 U.S.C. §§ 1981, 1983 and 1985. At the conclusion of Hughes' evidence at trial, the district court granted directed verdicts in favor of the Board and Harrison on Counts 5 (retaliation), 6 (assault and battery), 8 (intentional infliction of emotional distress), 9 (fraud and deceit), and 10 (violation of Va. Code Ann. §§ 18.2-499 and 500). Hughes abandoned Count 7, his claim of intentional interference with contractual relations. The parties stipulated the evidence as to Count 1, the

Title VII claim, and the district court found for the defendants on that claim.

In granting the directed verdicts as to the § 1983 retaliation claims, the trial court held that "the evidence is in such a posture that it would be mere speculation for a jury to come back and say that the motive for terminating Mr. Hughes was based on the exercise of his First Amendment rights to testify and cooperate with the investigation, an investigation which was over a year and one-half old. I think at that point in time probably that was a dead letter."

Hughes appealed to the Court of Appeals for the Fourth Circuit which affirmed the actions of the district

court granting directed verdicts for the Board and Harrison. In so doing, the Court of Appeals rejected Hughes' contention that he was terminated pursuant to an unconstitutional custom or policy of the Board and that he was terminated by Harrison in retaliation for the exercise of his First Amendment rights. The Court of Appeals expressly found that Harrison was not a policy-maker under the tests set forth by this Court in Pembaur v. Cincinnati, 475 U.S. 469 (1986); that Harrison did not terminate Hughes; that "there is a complete lack of evidence of any 'custom or usage' engaged in by the school board to retaliate against whistle-blowers"; and that "there is no

retaliatory motive on the part of the board." Hughes v. Halifax County School Board, 855 F.2d 183, 185-86 (4th Cir. 1988).

SUMMARY OF ARGUMENT

The petitioner has presented no important or special reasons for granting a writ of certiorari in this case, nor are there any. The Court of Appeals followed the teachings of this Court and correctly applied state law to the virtually uncontested facts of this case.

ARGUMENT

I.

THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE DIRECTED VERDICT IN FAVOR OF THE BOARD ON THE § 1983 RETALIATION CLAIM.

Hughes contended that the Board and Harrison were liable for violating his civil rights because his employment was terminated in retaliation for his cooperation in a grand jury investigation. The Board did not have an express policy requiring the termination of employees who cooperated in the grand jury investigation. Consequently, Hughes argued that the Board could have been found liable on the basis of a "custom or usage", Monell v. Dept. of Social Services of the City of New York, 436 U.S. 658, 694 (1978), or on the

basis that Harrison was a policymaker who terminated him with a retaliatory motive. Pembaur, supra. The Court of Appeals found that Harrison was not a "final policymaker" whose actions were binding on the Board. This finding was wholly consistent with Pembaur, with state law, and with the findings of the district court.[1]

Nowhere in the law of Virginia is there a reference to the position of supervisor of maintenance and operations, much less a grant of authority to such a person to terminate the employment of school board employees. Rather, the Constitution and statutes of

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[1] The district court held that the Superintendent of Schools, and not Harrison, was a policymaker.

Virginia place the supervision and management of a local school system in the local school board. Va. Const. Art. VIII, § 7; Va. Code Ann. § 22.1-28. See Bradley v. School Board, 462 F.2d 1058 (4th Cir. 1972), aff'd 412 U.S. 92 (1973). This power of supervision includes the indispensable function of supervising personnel. School Board v. Parham, 218 Va. 950, 243 S.E.2d 468 (1978). The Court of Appeals was correct, therefore, in holding that Harrison was not a policymaker, much less a final policymaker.

The Court of Appeals also found that Harrison did not terminate Hughes. Rather, that decision was made by the Superintendent of Schools. This finding

was compelled by the uncontested evidence at trial and was consistent with the findings of the district court.

The Court of Appeals also held that there was no evidence of "custom or usage" of retaliation. Again, this holding was compelled by the fact that Hughes never attempted to prove any retaliation beyond his own case and it was entirely consistent with this Court's decision in City of Oklahoma v. Tuttle, 471 U.S. 808, 823-24 (1983).

Lastly, the Court of Appeals found no evidence of a retaliatory motive on Harrison's part. Again, this finding is consistent with that of the district court.

II.

THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE DIRECTED VERDICT IN FAVOR OF HARRISON ON THE § 1983 RETALIATION CLAIM.

As previously discussed, the Court of Appeals and the district court found a total lack of evidence of retaliatory motive on Harrison's part. Likewise, Hughes' evidence established that the Superintendent of Schools, and not Harrison, terminated Hughes. Both the Court of Appeals and the district court were entirely correct in holding that there was no evidence supporting a retaliation claim against Harrison.

CONCLUSION

For the reasons stated above, the Halifax County School Board and Julian Harrison respectfully request that the petition for writ of certiorari be denied.

Respectfully submitted,

Halifax County School Board
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